

2 INFORMATION SHARING & CONFIDENTIALITY

2.1 JUSTIFICATION FOR SHARING INFORMATION

- 2.1.1 Research and experience has demonstrated that to keep children safe from harm it is essential that professionals maximise the potential for safe partnership with parent/s and share relevant information across geographical and professional boundaries.
- 2.1.2 Often it is only when information from a number of sources has been shared, collated and analysed, that it becomes clear a child is suffering, or is likely to suffer significant harm.
- 2.1.3 Information relevant to child protection will be about:
- Health and development of a child and her/his exposure to possible harm
 - A parent / carer who is unable to care adequately for a child
 - Other individuals who may present a risk of harm to the child
- 2.1.4 The consent of a person under the age of eighteen is as significant as that of an adult where s/he is the subject of information, provided s/he has sufficient understanding to provide it. If a member of staff is in doubt about a child's competence s/he should seek legal advice.
- 2.1.5 Where a child does not have the capacity to consent, it should be sought, if it does not place her/him at additional risk, from a person with parental responsibility for that child.
- 2.1.6 It is the duty of professionals, whether they are providing services to adults or children, to place the needs of the child first.
- 2.1.7 Each case will depend on its own facts and legal advice should always be sought from agencies' own legal advisers where the professional is concerned about the legality of sharing information.

2.2 RELEVANT LAW & GOVERNMENT REQUIREMENTS

- 2.2.1 The main sources of law and other requirements with respect to information sharing and confidentiality in child protection are the:
- Common law duty of confidence
 - European Convention on Human Rights (via its introduction into English law in the Human Rights Act 1998)
 - Data Protection Act 1998
 - Crime and Disorder Act 1998

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- Children Act 1989
- Safeguarding Vulnerable Groups Act 2006 [not yet implemented]
- Freedom of Information Act 2001
- Caldicott Standards (Health and Children's Services)
- Non statutory government guidance on information sharing 2006

COMMON LAW

- 2.2.2 The 'Common Law Duty of Confidence' arises when a person shares information with another in circumstances where it is reasonable to expect that the information will be kept confidential e.g. a contract, a patient-doctor, solicitor-client, pupil-teacher relationship.
- 2.2.3 Personal information about children and families kept by professionals and agencies should not generally be disclosed without the consent of the subject.
- 2.2.4 The duty of confidence is **not** absolute and disclosure can be justified if:
- The information is not confidential in nature e.g. it is trivial or readily available elsewhere e.g. a social worker seeking confirmation from a school of a child's attendance that day
 - The person to whom the duty of confidence is owed has 'expressly' authorised disclosure (orally or in writing) or 'implicitly' authorised it (a referrer of an allegation of abuse to Children's Social Care would expect the information to be shared on a 'need to know' basis)
 - There is an overriding public interest in disclosure
 - Disclosure is required by a court order or other legal obligation
- 2.2.5 The disclosure of information should not be an obstacle if an individual has particular concerns about the welfare of a child, the information is disclosed to another professional and the disclosure is justified under the common law duty of confidence.
- 2.2.6 The key factor in deciding whether to disclose confidential information is 'proportionality' i.e. is the proposed disclosure a proportionate response to the need to protect the child's welfare. The amount of confidential information, and the number of people to whom it is disclosed should be no more than is necessary to meet the public interest in protecting the health and well-being of the child.
- 2.2.7 The approach to confidential information should be the same whether any proposed disclosure is internally within an organisation e.g. within a school or Children's Social Care or between agencies e.g. teacher to a social worker.

EUROPEAN CONVENTION ON HUMAN RIGHTS

- 2.2.8 Article 8 of the above Convention states that:
- Everyone has the right to respect for her/his private and family life, home and correspondence
 - There shall be no interference by a public authority with the exercise of this right except such as in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, protection of health or morals or for the protection of rights and freedom of others
- 2.2.9 The right is not absolute and in certain situations Article 8 enables professionals to disclose information without consent - e.g. to:
- Safeguard a child
 - Protect her/his health or morals
 - Protect the rights and freedoms of others or
 - Prevent disorder or crime
- 2.2.10 As with the common law described above, the principle of 'proportionality' applies to sharing confidential information i.e. when disclosing information without consent one must limit the extent of the disclosure to that which is absolutely necessary to achieve the aim of disclosure e.g. child protection.

DATA PROTECTION ACT 1998

- 2.2.11 The Data Protection Act 1998 (as amended) regulates handling of information kept about an individual on a computer or in a manual system and requires of public authorities that any personal information is:
- Obtained and processed fairly and lawfully
 - Processed for limited purposes and not in any manner incompatible with those purposes
 - Accurate and relevant
 - Held for no longer than necessary
 - Kept secure
 - Only disclosed if specific conditions set out in the Act are satisfied
- 2.2.12 The amendments to the Data Protection Act 1998 introduced by the Freedom of Information Act 2000 ([see 2.5](#) below) mean that any incidental personal information held in loose papers etc (as opposed to a structured filing system) is now also covered by subject access and accuracy obligations.

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- 2.2.13 Legitimate conditions (in Schedule 2 of the Data Protection Act 1998) for sharing information include that:
- Consent of the person to whom the data relates has been obtained
 - Disclosure is necessary to comply with a legal obligation
 - It is necessary to protect the vital interests of the data subject
 - It is necessary for the exercise of a statutory function or other public function exercised in the public interest e.g. a s.17 assessment or s.47 enquiries and
 - It is necessary for the purposes of legitimate interests pursued by the person sharing the information (except where it is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject)
- 2.2.14 Many of the above conditions, especially the latter one offer a justification for sharing information (mindful of the proportionality principle).
- 2.2.15 If the information being shared is 'sensitive personal data' e.g. racial or ethnic origin, religious beliefs or political opinions, trade union membership, sexual life, criminal offences, one of the following additional conditions of Schedule 3 must be met:
- The subject has explicitly consented
 - It is necessary to protect her/his vital interests or those of another person where the subject's consent cannot be given or is unreasonably withheld or cannot reasonably be expected to be obtained
 - It is necessary to establish, exercise or defend legal rights
 - It is necessary for the exercise of any statutory function and
 - It is in the substantial public interest and necessary to prevent or detect an unlawful act and obtaining express consent would prejudice those purposes.
- 2.2.16 Defence of a child's 'legal rights' under the Human Rights Act 1998 or exercise of a statutory function in connection with a s.17 assessment or a s.47 enquiries may offer justification for information sharing.
- 2.2.17 For more detailed information see www.dataprotection.gov.uk

CALDICOTT STANDARDS

- 2.2.18 For the NHS and councils with social services responsibilities, the Caldicott principles and processes provide a framework of quality standards for the management of confidentiality and access to personal information under the leadership of a Caldicott Guardian.

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- 2.2.19 This includes 'Safe Haven' principles on the secure storage and transfer of confidential information.
- 2.2.20 These Standards apply to NHS organisations and Councils with Social Services Responsibilities in order to provide an effective framework to operationalise the Data Protection Act 1998 and underpin appropriate information sharing.
- 2.2.21 Health and Children's Social Care must ensure that their information sharing arrangements are compliant with their own local procedures based on the Caldicott Standard (see Health Service Circular/LAC circular HSC 2002/003/LAC (2002) 2 'Implementing the Caldicott Standard into Social Care').
- 2.2.22 Each health service and Children's Social Care will have its own Caldicott Guardian who should be able to provide advice and guidance.

NON STATUTORY GOVERNMENT GUIDANCE

- 2.2.23 The latest government view of best professional practice is detailed in www.ecm.gov.uk/informationsharing which includes:
- A practitioners' guide
 - Further guidance on legal issues and
 - A set of case exemplars
- 2.2.24 The above practitioners' guide *Information Sharing: Practitioners' Guide* (modified by the authors of these procedures at the italicised section of the third bullet point) may be summarised as follows:
- 'You should explain to children / young people and families at the outset, openly and honestly, what and how information will, or could be shared and why, and seek their agreement -the exception to this is where to do so would put that child, young person or others at increased risk of significant harm or an adult at risk of serious harm, or if it would undermine the prevention, detection or prosecution of a serious crime including where seeking consent might lead to interference with any potential investigation
 - You must always consider the safety and welfare of a child or young person when making decisions on whether to share information about them -where there is concern that the child may be suffering or is at risk of suffering significant harm, the child's safety and welfare must be the overriding consideration
 - You should, *where it is consistent with your view of the needs of the child*, respect the wishes of children, young people or families who do not consent to share confidential information -you may still share information, if in your judgement on the facts of the case, there is sufficient need to override that lack of consent.

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- You should seek advice where you are in doubt, especially where your doubt relates to a concern about possible significant harm to a child or serious harm to others
- You should ensure the information you share is accurate and up-to-date, necessary for the purpose for which you are sharing it, shared only with those people who need to see it, and shared securely
- You should always record the reasons for your decision – whether it is to share information or not'

2.2.25 The above guidance (para. 3.12) indicates that in the following circumstances, sharing confidential information without consent will **normally be justified** in the public interest:

- 'There is evidence that the child is suffering or at risk of suffering significant harm or
- There is reasonable cause to believe that a child may be suffering or at risk of significant harm or
- To prevent significant harm arising to children / young people or serious harm to adults, including through the prevention, detection and prosecution of serious crime'

OVERALL LEGAL & BEST PROFESSIONAL PRACTICE

2.2.26 Thus, in general, the **law** does not prevent individual sharing information with other practitioners if:

- Those likely to be affected, consent
- The public interest in safeguarding the child's welfare overrides the need to keep the information confidential
- Disclosure is required by court order or other legal obligation

2.3 PROFESSIONAL GUIDANCE

DOCTORS

2.3.1 *What To Do If You're Worried a Child is Being Abused* DH 2003 superseded 'Guidance to Doctors Working with Child Protection Agencies' (an addendum to *Working Together to Safeguard Children* 1999).

2.3.2 Updated General Medical Council (GMC) guidance - '*Confidentiality: Protecting and Providing Information*' (2004) emphasises the importance generally of obtaining a patient's consent to disclosure of personal information but makes it clear it may be released without consent to third parties e.g. statutory agencies such as Children's Social Care and Police, in exceptional circumstances if:

- A failure to disclose information may expose the patient, or others, to risk of death or serious harm

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- 2.3.3 The GMC has confirmed that its guidance refers to information about:
- Third parties who are of direct relevance to child protection, e.g. adults who may pose a risk to a child
 - Children who may be the subject of abuse

NURSES & OTHER HEALTH STAFF

- 2.3.4 *'What To Do If You're Worried a Child is Being Abused'* DH 2003 superseded *'Child Protection: Guidance for Senior Nurses, Health Visitors, Midwives and their Managers'*
- 2.3.5 The Nursing and Midwifery Council (NMC) has produced a code of professional conduct which contains the advice that disclosure of information may occur:
- With the consent of the patient or client
 - Without the consent of the patient or client when the disclosure is required by law or by order of a court
 - Without the consent of the patient or client when the disclosure is considered to be necessary in the public interest (public interest is defined to include child protection)
- 2.3.6 The Health Professionals Council which governs therapies and professions allied to medicine has produced a statement on confidentiality and individual professional bodies produce their own, essentially similar guidance.
- 2.3.7 When in doubt health staff may consult the named professional who may in turn seek advice from the designated doctor or nurse and/or the Caldicott Guardian or solicitor of the Trust.

POLICE

- 2.3.8 Police are lawfully able to supply information to relevant third parties for defined categories of request.
- 2.3.9 Care must be taken in all cases to ensure that all information disclosed is accurate, topical, factual, proportionate for the purpose for which it is passed and above all, relevant and necessary to the issue and the individual concerned
- 2.3.10 The six categories of request for information which Police CAIUs can lawfully respond to are those in which:
- A child protection referral is made in relation to an enquiry under s.47 Children Act 1989 e.g. during a strategy discussion
 - Information is requested as part of an inter-agency risk management meeting set up under the Sexual Offences Act 2003

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- Children's Social Care is carrying out an Initial Assessment in order to inform a decision as to the justification for a s.47 enquiry
- Children's Social Care is carrying out a 'child in need' assessment under s.17 Children Act 1989 and written consent from the subject/s has been obtained or the need to safeguard a child overrides the duty of confidence
- The request relates to a child who is subject of a child protection plan
- Children's Social Care is faced with the immediate need to place a child with a family member or friend in an emergency and has obtained the necessary consents

2.3.11 Any request for information that does not fall within these categories must be declined. Where there is doubt, the Police legal services or the Data Protection Unit will be consulted.

2.3.12 Information will be provided by Police on the strict understanding that it is confidential in nature, will only be used for the purposes of a child protection or child in need assessment and that it may not be passed on to any third party without express permission of the Police.

2.3.13 In urgent cases, information shared as part of a s.47 enquiry may be provided verbally prior to being confirmed in writing.

EDUCATION STAFF

2.3.14 Education staff have a responsibility to share information about the protection of children with other professionals, particularly investigative agencies e.g. Police and Children's Social Care

2.3.15 S.27 Children Act 1989 imposed a duty on other local authorities to assist Children's Social Care in the exercise of their functions e.g. child protection, if requested to do so and if it is not prejudicial to the discharge of their own functions.

2.3.16 S.175 Education Act 2002 introduced additional duties on Children's Services (Education) to 'make arrangements for ensuring that the functions conferred upon them in their capacity as Children's Services (Education) are exercised with a view to safeguarding and promoting the welfare of children' (s.157 of the same Act introduced a similar duty for independent schools, Academies and Technology Colleges with respect to their pupils).

2.3.17 The current duties and expectations of educational institutions are described in [module13](#).

SOCIAL WORKERS

- 2.3.18 The General Social Care Council (GSCC) and British Association of Social Workers (BASW) Codes of Ethics (2002) allow for divulging confidential information without consent of the service user or informant when there is clear evidence of serious danger to the service user, worker or other persons.

2.4 PRACTICE REQUIREMENTS FOR INFORMATION TRANSFER

- 2.4.1 The net result of legislation and professional guidance as summarised above is that professionals may share information for a child protection purpose without the consent of the subject:
- To protect the vital interests of the person
 - Where seeking permission might place the child or another person at serious risk of significant harm
 - Where such action might reasonably assist in the prevention or detection of serious crime
- 2.4.2 It is important that each professional accept responsibility for her/his own referrals and should not seek to provide information to another agency anonymously.

ROUTINE 'CHECKS' – S.17 & 47 ENQUIRIES

- 2.4.3 The permission of the subject (child or parent) must ordinarily be sought on those occasions when there is a need to gather further information via checks with other agencies, in order to:
- Progress an assessment of need (s.17 Children Act 1989)
 - Decide whether to re-designate an assessment of need to a child protection (s.47 Children Act 1989) enquiry or
 - Inform such a s.47 enquiry
- 2.4.4 Such checks **may be completed without such permission** if:
- Seeking permission is likely to increase risk to children concerned or other individuals e.g. by causing a substantial delay to the s.47 enquiry
 - A request for permission has been refused, the reason for refusal has been considered and sufficient professional concern remains to justify disclosure
 - Seeking permission is likely to impede a criminal investigation

RECORDING OF INFORMATION SOUGHT & SHARED

- 2.4.5 The person requesting information from another agency and the person in that agency who provides it must record the event in accordance with her/his own agency procedures.
- 2.4.6 The recording must indicate if the consent of the relevant person was sought and obtained, sought and refused or not sought.
- 2.4.7 If information was provided without consent, reason/s for so doing must be made clear and the record indicate whether the person in question was subsequently informed of the information transfer.

CONFIDENTIALITY OF EXCHANGES OF INFORMATION

- 2.4.8 Unless s/he is already known, a phone call received from a professional seeking information must be verified before information is divulged, by calling her/his agency back and a record of any information relayed by phone or in person must be made.
- 2.4.9 Transmission of personal and sensitive information by fax should only happen when absolutely necessary. The number / address to which it is being sent should be checked very carefully (preferably by a colleague) and reassurance provided and recorded about the security of its handling by the other agency.
- 2.4.10 When sending out e-mails containing confidential information, a confidentiality warning should be used. Best practice suggests that confidential information should only be sent by secure electronic systems and not by internet e-mail.
- 2.4.11 All agencies must ensure that their record keeping is maintained in accordance with statute and guidance (both national and local).

'WHAT TO DO IF YOU'RE WORRIED A CHILD IS BEING ABUSED'

- 2.4.12 The above cross government practice guidance was distributed widely in 2003 and remains a succinct and useful introduction to all relevant child protection processes (its appendix 3 provides a simplified account of law and best practice with respect to information sharing).

2.5 FREEDOM OF INFORMATION ACT 2000

Operational practice

- 2.5.1 The Freedom of Information Act 2000 (FOIA 2000), fully implemented on 01.01.05, amended but did not replace the Data Protection Act 1998 which continues to apply to requests by an individual for access to her/his **personal** records.
- 2.5.2 The new Act reflects commitments to more openness made soon after this government was elected in 1997 and every relevant organisation is obliged to develop, obtain the approval of the Information Commissioner and publicise its information scheme.
- 2.5.3 The FOIA 2000 confers on applicants to public authorities, a **general statutory right** to:
- Be told whether the authority e.g. social work, education and health services, Police etc, holds recorded information, and if so
 - Have that information communicated to them
- 2.5.4 The FOIA 2000 specifies conditions which need to be fulfilled before an authority is obliged to comply with a request:
- The applicant (an individual or an organisation) must describe what s/he wants
 - If the organisation's policy requires it, pay, within three months of her/his request, a fee (no fee is chargeable for requests costing less than £450-00 of work charged at the rate of £25 per person)
- 2.5.5 In practice, each organisation will have its own fee structure reflecting the various fee regimes established in regulations.
- 2.5.6 The public authority must comply with its duty as follows:
- Promptly and within twenty working days or
 - Other period (not exceeding sixty working days) from receipt of request as per the Freedom of Information (Time for Compliance with Request) Regulations 2004
 - It must respond by the method requested by the applicant unless this is not reasonably practicable
 - If it declines an application, it must provide reasons
- 2.5.7 Many exemptions from the obligation to confirm the existence of and share information exist, relating to either:
- A 'class' of information
 - Application of a 'prejudice' test or
 - Consequences of disclosure

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2.5.8 Exemptions may be:

- 'Absolute', if the need to balance public interest in disclosure against public interest in maintaining exemption does not arise or
- 'Qualified', when the application must be balanced against the public interest in disclosure

2.5.9 The following exemptions are likely to be of most relevance in the child protection context:

- The information sought is available by other means anyway e.g. information leaflets or information which is intended to be published e.g. an annual report etc (except historical records kept in public record offices)
- Repeated or substantially similar requests from the same person (unless made at reasonable intervals)
- Any information held at any time by a public authority for the purpose of a criminal investigation / criminal proceedings conducted by it
- Information relating to the obtaining of information from confidential sources (informers) if obtained or recorded for purposes of the authority's functions relating to criminal investigations or proceedings, those associated with law enforcement or civil proceedings arising from such investigations
- Information held by a public authority in documents filed with or placed in custody of court or served upon or by the public authority for purpose of court proceedings or which a court has created in proceedings
- Disclosure would (in the reasonable opinion of a qualified person) prejudice or be likely to prejudice effective conduct of public affairs
- Disclosure would or would be likely to, endanger the physical or mental health or safety of any individual
- Personal information relating to the applicant which is covered instead by the Data Protection Act 1998
- Information obtained from any other person if its disclosure would constitute a breach of confidence actionable by that or any other person (note though as indicated above, the common law duty of confidence itself provides that a duty of confidence does not arise having regard to public interest)
- Any information covered by legal professional privilege
- Vexatious applications

2.5.10 Management / legal advice should be sought for all FOIA 2000 requests.

'Management of Police Information' (MOPI)

- 2.5.11 Police information sharing protocols must be reviewed annually and be capable of audit adhering to the 2006 ACPO MOPI guidance.

2.6 PROPOSED INFORMATION SHARING INDEX

- 2.6.1 The government is committed to introducing by the end of 2008 in all areas of England, an 'information sharing index' that will support the work of children's services.

- 2.6.2 The objectives of the index are to:

- Help practitioners identify quickly a child with whom they have contact and whether that child is getting the universal service (education, primary health care) to which s/he is entitled
- Enable earlier identification of needs and earlier and more effective action to address these needs by providing a tool for practitioners to identify who else is involved with or has a concern about a child and
- Be an important tool to encourage better communication and closer working between different professionals and practitioners

- 2.6.3 The proposed index will hold for each child:

- Basic identifying information, name address, gender, date of birth and a unique identifying number based on the existing Child Reference / National Insurance Number
- Basic identifying information about child's parent / carer
- Contact details for services involved with the child: as a minimum, school and GP practice, but also other services when appropriate, and
- The facility for practitioners to indicate to others that they have information to share, are taking action or have undertaken an assessment in relation to a child

- 2.6.4 The index will **not** provide an integrated case management system or replace case record systems already under development in health (NHS Care Records) or in social care (Integrated Children's System).

- 2.6.5 Further information may be found at www.ecm.gov.uk/informationsharing